



सत्यमेव जयते

आयुक्त (अपील) का कार्यालय,
Office of the Commissioner (Appeal),
केंद्रीय जीएसटी, अपील आयुक्तालय, अहमदाबाद
Central GST, Appeal Commissionerate, Ahmedabad
 जीएसटी भवन, राजस्व मार्ग, अम्बावाड़ी, अहमदाबाद ३८००१५.
 CGST Bhavan, Revenue Marg, Ambawadi, Ahmedabad 380015
 07926305065- टेलीफैक्स 07926305136



DIN- 20220664SW000000C20D

रजिस्टर्ड डाक ए.डी. द्वारा

क फाइल संख्या : File No : GAPPL/ADC/GSTP/1840/2021 -APPEAL /1543 7015818

ख अपील आदेश संख्या Order-In-Appeal Nos. **AHM-CGST-001-APP-ADC-41/2022-23**
 दिनांक Date : **09-06-2022** जारी करने की तारीख Date of Issue : **09-06-2022**
श्री मिहिर रायका अपर आयुक्त (अपील) द्वारा पारित
 Passed by Shri. Mihir Rayka, Additional Commissioner (Appeals)

ग Arising out of Order-in-Original No. **ZX2405210430573** dated **24.05.2021**
 issued by Assistant Commissioner, CGST, Division V (Odhav), Ahmedabad South

ध अपीलकर्ता का नाम एवं पता Name & Address of the Appellant / Respondent
M/s. Ilesh Vinodchandra Shah of M/s. Het Marketing, Shed-21, Gokul Industrial Estate, Kathwada, Ahmedabad, Gujarat, 382430

(A)	इस आदेश(अपील) से व्यथित कोई व्यक्ति निम्नलिखित तरीके में उपयुक्त प्राधिकारी / प्राधिकरण के समक्ष अपील दायर कर सकता है। Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following way.
(i)	National Bench or Regional Bench of Appellate Tribunal framed under GST Act/CGST Act in the cases where one of the issues involved relates to place of supply as per Section 109(5) of CGST Act, 2017.
(ii)	State Bench or Area Bench of Appellate Tribunal framed under GST Act/CGST Act other than as mentioned in para- (A)(i) above in terms of Section 109(7) of CGST Act, 2017.
(iii)	Appeal to the Appellate Tribunal shall be filed as prescribed under Rule 110 of CGST Rules, 2017 and shall be accompanied with a fee of Rs. One Thousand for every Rs. One Lakh of Tax or Input Tax Credit involved or the difference in Tax or Input Tax Credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of Rs. Twenty-Five Thousand.
(B)	Appeal under Section 112(1) of CGST Act, 2017 to Appellate Tribunal shall be filed along with relevant documents either electronically or as may be notified by the Registrar, Appellate Tribunal in FORM GST APL-05, on common portal as prescribed under Rule 110 of CGST Rules, 2017, and shall be accompanied by a copy of the order appealed against within seven days of filing FORM GST APL-05 online.
(i)	Appeal to be filed before Appellate Tribunal under Section 112(8) of the CGST Act, 2017 after paying - (i) Full amount of Tax, Interest, Fine, Fee and Penalty arising from the impugned order, as is admitted/accepted by the appellant, and (ii) A sum equal to twenty five per cent of the remaining amount of Tax in dispute, in addition to the amount paid under Section 107(6) of CGST Act, 2017, arising from the said order, in relation to which the appeal has been filed.
(ii)	The Central Goods & Service Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019 has provided that the appeal to tribunal can be made within three months from the date of communication of Order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
(C)	उच्च अपीलीय प्राधिकारी को अपील दाखिल करने से संबंधित व्यापक, विस्तृत और नवीनतम प्रावधानों के लिए, अपीलार्थी विभागीय वेबसाइट www.cbic.gov.in को देख सकते हैं। For elaborate, detailed and latest provisions relating to filing of appeal to the appellate authority, the appellant may refer to the website www.cbic.gov.in .

ORDER IN APPEAL

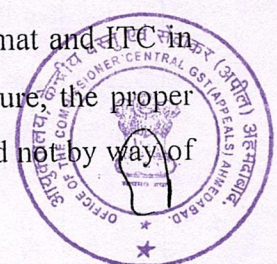
Shri Ilesh Vinodchandra Shah of M/s.Het Marketing, Shed 21, Gokul Industrial Estate, Kathwada, Ahmedabad 382 430 has filed the present appeals on dated 13-8-2021 against Order No.ZX2405210430573 dated 24-5-2021 (hereinafter referred to as the impugned order) passed by the Deputy Commissioner, Division V (Odhav), Ahmedabad South.

2. Briefly stated the fact of the case is that the appellant registered under GSTIN 24BRZPS0900C1ZT has filed refund claim for refund for Rs.1,23,510/- on account of ITC accumulated due to inverted tax structure. The appellant was issued show cause notice No.ZN2404210347416 dated 29-4-2021 on the ground that Annexure B not in prescribed format as mandated in Notification No.135/2020 and ITC in GSTR2A is not clear.. The adjudicating authority vide impugned order held that refund is inadmissible to the appellant on the ground of compliance to SCN.

3. Being aggrieved the appellant filed the present appeal on the ground that the adjudicating authority has wrongly disallowed the claim for non-availability of documents.

4. Personal hearing was held on dated 25-5-2022. Shri Dhaval Chauhan authorized representative appeared on behalf of the appellant on virtual mode. He has asked for additional submissions for which three working days are granted. Accordingly, the appellant made additional submission that in response to show cause notice they were not able to file reply to show cause notice as the consultant office was not working due to covid pandemic. The adjudicating authority has provided just one opportunity and without any further communication has passed the order of rejection. The adjudicating authority has not given any proper reason for rejecting the refund application as the 2A is clear attached at the time of application, so the officer has wrongfully rejected their claim without verifying the details submitted with the claim. They also submitted GSTR2A, Annexure B and reconciliation statement.

5. I have carefully gone through the facts of the case, grounds of appeal, submission made by the appellant and documents available on record. I find that the adjudicating authority has rejected the refund claim due to non-compliance to SCN. In their grounds of appeal, the appellant admitted that due to Covid 19 pandemic they had not filed any reply to the show cause notice. Therefore, I find that the finding of adjudicating authority is factually correct. However, by rejecting the refund on this ground, it also emerges that the order for rejection was passed without considering reply to the show cause notice and without recording reasons for rejection of refund, which I find is against the provisions of Rule 92 (3) of CGST Act, 2017. I further notice that in the show cause notice, claim was proposed for rejection due to non-submission of Annexure B in prescribed format and ITC in GSTR2A is not clear. As per Rule 90 of CGST Rules, for discrepancy of such nature, the proper course of action is by way of issue of deficiency memo for necessary rectification and not by way of issue of show cause notice.



6. During appeal the appellant has submitted Annexure B which is as per format prescribed under Notification No.135/2020 and also submitted GSTR2A in which ITC shown is very much clear and legible. I further find that as per provisions of Rule 92 of CGST Rules, 2017, the sanctioning authority is empowered to sanction the admissible refund and reject the refund found inadmissible recording reasons in writing. Besides, vide Circular No.135/05/2020 – GST dated the 31-3-2020, it was also clarified that the refund of accumulated ITC shall be restricted to the ITC as per those invoices, the details of which are uploaded by the supplier in FORM GSTR-1 and are reflected in the FORM GSTR-2A of the applicant. Further as per Rule 89 (5) of CGST Rules, ITC availed on input services and capital goods are kept out of purview of 'Net ITC' in the formula prescribed for determining the admissible refund. Accordingly, so far as refund of ITC accumulated due to inverted tax structure cases are concerned, specific statutory provisions and clarification is in force for arriving the admissible refund. Since the appellant has complied with the requirement of show cause notice in the current proceedings, in the interest of justice and fairness, I allow this appeal with consequential benefit to the appellant. I further order that any claim of refund made in consequent to this order may be examined in accordance with CGST Act and Rules made thereunder and also on the basis of Circulars issued by the Board. Accordingly, I set aside the impugned orders and allow the appeals filed by the appellant.

अपील कर्था द्वारा दर्ज की गई अपील का निपटारा उपरोक्त तरीके से किया जाता है।

7. The appeal filed by the appellant stands disposed of in above terms.

Date :

Attested

(Sankara Raman B.P.)
Superintendent
Central Tax (Appeals),
Ahmedabad

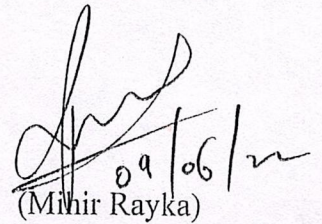
By RPAD

To,

Shri Ilesh Vinodchandra Shah
of M/s.Het Marketing,
Shed 21, Gokul Industrial Estate,
Kathwada, Ahmedabad 382 430

Copy to :

- 1) The Principal Chief Commissioner, Central tax, Ahmedabad Zone
- 2) The Commissioner, CGST & Central Excise (Appeals), Ahmedabad
- 3) The Commissioner, CGST, Ahmedabad South
- 4) The Deputy Commissioner, CGST, Division IV (Narol) Ahmedabad South
- 5) The Additional Commissioner, Central Tax (Systems), Ahmedabad South
- 6) Guard File
- 7) PA file


(Mihir Rayka)

Additional Commissioner (Appeals)

